which recognizes a sequence within the 5' flanking region in SEQ ID No. 8 or the 3' flanking region in SEQ ID No. 10 of MS-B2.

REMARKS

It is respectfully stated that Group I, is elected, with traverse, for further prosecution in this application.

Additionally, by the instant amendment, claims 23, 24 and 29 have been amended to clarify to recite language which specifies that the application relates to transgenic rice plants and materials thereof. No new matter is added thereby.

As a traverse, it is noted that the MPEP lists two criteria for a proper restriction requirement. Firstly, the inventions must be independent or distinct (MPEP § 803). Secondly, searching the additional inventions must constitute an undue burden on the Examiner if restriction is not required. *Id.* The MPEP directs the Examiner to search and examine an entire application "[i]f the search and examination of an entire application can be made without serious burden, ...even though it includes claims to distinct or independent inventions." *Id.*

All of the claims of the application relate to the single inventive concept of plants that comprise elite event MS-B2. Methods for identifying plants comprising the MS-B2 elite event and the kits for identifying those plants are based on the same molecular characteristics of the plants, i.e. the flanking regions of the MS-B2 elite event in the plants, and are one invention.

Applicants disagree with the Examiner's assessment that the product of Group II may be independently used in processes unrelated to those of Group I. Independent claim 29 of Group II is clearly specific to the identification of "elite event MS-B2 in biological samples", and thus cannot be understood to relate to a kit for identifying other viruses or organisms. As the flanking regions represented in SEQ ID No. 8 and SEQ ID No. 10 are specific for the elite event, the

primer recognizing the event will only detect the elite event MS-B2 of the invention. They may NOT be utilized with any nucleic acid template, as the Office Action states at page 3. Therefore, Groups I and II do not represent independent and distinct inventions, and it is respectfully submitted that restriction is not proper.

Further, it is respectfully submitted that any search encompassing methods for identifying plants comprising the MS-B2 elite event will certainly also encompass kits for said identification. Therefore, there is no undue burden on the Examiner in searching and examining the claims of Groups I and II together in this application.

In support of Applicants' position, the Examiner's attention is directed to APPENDIX A, which lists the claims that have been allowed in U.S. application Serial No. 09/471,913, an application that is directly analogous to the present one. Claim 26 of 09/471,913 is drawn to a kit for identifying plants, plant cells or tissues, or transgenic plant material containing elite event GAT-OS2. The other six claims of the application are drawn to methods for identifying plants, plant cells or tissues, or transgenic plant material containing the elite event. This is direct evidence that methods for the identification of an elite event and kits for the identification of the same elite event are not considered to be distinct, independent inventions by the USPTO, and further, that it does not constitute an undue burden on the Examiner to search and examine both types of claims in the same application.

Finally, the result of the present restriction requirement is inefficiency and unnecessary expenditures by both the Applicants and the PTO, and prejudice to Applicants (particularly in view of GATT, as a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since there is a clear relationship between

the claims of Groups I and II. These factors mitigate against restriction, and support Applicants' position that all of the pending claims should be examined together in this application.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the restriction requirement of the Office Action dated April 5, 2002. Early and favorable examination on the merits of all of the claimed subject matter is earnestly solicited.

No fee is believed to be due for the submission of this paper, however, the Commissioner is hereby authorized to charge any fee occasioned by this paper, or credit any overpayment in such fees, to Deposit Account No. 50-0320.

Respectfully submitted,

Attorneys for Applicants
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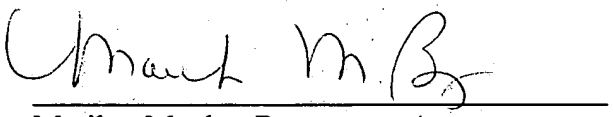
By: 

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APPENDIX A. ALLOWED CLAIMS U.S.S.N. 09/471,913

24. A method for identifying a transgenic rice plant, or cell or tissue thereof, or transgenic rice plant material, comprising elite event GAT-OS2, which method comprises establishing whether the genomic DNA of the plant, cell, tissue or seed, or plant material, can amplify a DNA fragment of between 290 and 350 bp, using a polymerase chain reaction (PCR) with two primers having the nucleotide sequence of SEQ ID No. 2 and SEQ ID No. 3, respectively; and thus identifying a transgenic rice plant, or cell or tissue thereof, or transgenic rice plant material comprising elite event GAT-OS2, if said genomic DNA amplifies the DNA fragment using PCR with the primers.

25. The method of claim 24 wherein the DNA fragment is about 313 bp.

26. A kit for identifying a transgenic rice plant, or cell or tissue thereof, or transgenic rice plant material, comprising elite event GAT-OS2, said kit comprising PCR probes having the nucleotide sequences of SEQ ID NO:2 and SEQ ID NO:3, respectively.

27. A method for confirming seed purity, which method comprises detecting a GAT-OS2 specific DNA sequence using probes having the nucleotide sequences of SEQ ID No. 2 and SEQ ID No. 3, respectively; and thus confirming seed purity, if the GAT-OS2 specific DNA is so detected.

28. A method for confirming seed purity, which method comprises not detecting a GAT-OS2 specific DNA sequence using probes having the nucleotide sequences of SEQ ID No. 2 and SEQ ID No. 3, respectively; and thus confirming seed purity, if the GAT-OS2 specific DNA is not so detected.

29. A method for identifying a rice plant, or cell or tissue thereof, or rice plant material, not comprising elite event GAT-OS2, which method comprises establishing whether the genomic DNA of the plant, cell, tissue or seed, or plant material, cannot amplify a DNA fragment of between 290 and 350 bp, using a polymerase chain reaction (PCR) with two primers having the nucleotide sequence of SEQ ID No. 2 and SEQ ID No. 3, respectively; and thus identifying a rice plant, or cell or tissue thereof, or rice plant material not comprising elite event GAT-OS2, if said genomic DNA does not amplify the DNA fragment using PCR with the primers.

30. The method of claim 29 wherein the DNA fragment is about 313 bp.

APPENDIX B: MARKED UP VERSION TO SHOW CHANGES MADE

23. (Amended) A method for identifying elite event MS-B2 in [biological samples] a transgenic rice plant, or cell or tissue thereof, or trangenic rice plant material, which method comprises detection of a MS-B2 specific region with a specific primer or probe which specifically recognizes the 5' flanking region in SEQ ID No. 8 or the 3' flanking region in SEQ ID No. 10 of MS-B2.

24. (Amended) The method of claim 23, said method comprising amplifying a DNA fragment of between 160 and 200 bp from a nucleic acid present in said [biological samples] transgenic rice plant, or cell or tissue thereof, or trangenic rice plant material, using a polymerase chain reaction with at least two primers, one of which recognizes the 5' flanking region in SEQ ID No. 8 or 3' flanking region in SEQ ID No. 10 of MS-B2, the other which recognizes a sequence within the foreign DNA.

29. (Amended) A kit for identifying elite event MS-B2 in [biological samples] a transgenic rice plant, or cell or tissue thereof, or trangenic rice plant material, said kit comprising at least one PCR primer, which recognizes a sequence within the 5' flanking region in SEQ ID No. 8 or the 3' flanking region in SEQ ID No. 10 of MS-B2.